

REMARKS

Applicant has carefully reviewed this Application in light of the Final Office Action mailed June 2, 2005. At the time of the Office Action, Claims 41, 43, 44, 47, 48, and 56-58 were pending. Claims 1-18, 42, 45, 49-55, and 59-61 were previously cancelled by Applicant, and Claims 19-40 were previously withdrawn due to an election/restriction requirement. Claims 41, 43, 44, 47, 48, and 56-58 stand rejected under §103(a). Applicant amends Claim 41 and respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 103

Claims 41, 43-44, 47-48 and 56-58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,629,186 issued to Robert D. Yasukawa et al. (hereinafter "Yasukawa") in view of U.S. Patent 4,560,504 issued to Edward C. Arnold (hereinafter "Arnold"). Applicant respectfully traverses and submits that the combination of Yasukawa and Arnold, even if proper which Applicant does not concede, would not yield the claimed embodiment of the invention.

Claims 41, 43-44, 46-48 and 56-58 were rejected under 35 U.S.C. §103(a) as being unpatentable over PCT International Publication Number WO 96/24631 filed by Lyles et al. (hereinafter "Lyles") in view of Arnold. Applicant has amended the claims to delete the term "antibodies." Consequently, Applicant submits neither Lyles nor Arnold alone or in combination teach all of the limitations of the Amended Claims.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to §2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Here, all the limitations of the claimed embodiment of the invention are not taught by the cited art combination (which Applicant does not concede is proper). Independent Claim 41 includes the limitations that the porous material has mean pore diameters greater than about 10 microns and a density equal to or greater than 6 pounds per cubic foot. Neither Arnold nor Yasukawa, et al. alone nor in combination with each other teach a porous material having mean pore diameters greater than about 10 microns and a density equal to or greater than 6 pounds per cubic foot. Consequently, Applicant requests withdrawal of the rejection.

In relation to the Lyles/Arnold-based rejection, with the amendment to all claims, neither Lyles, et al. nor Arnold alone or in combination teach all the limitations of the amended claims, namely a material having the above-listed compounds bound thereto. Lyles, et al. discloses, as the Title confirms, a "Ceramic Fused Fiber Enhanced Dental Material." Lyles, et al. disclose "significantly improved particulates that are useful as fillers in dental restorative and prosthetic compositions" (Lyles et al., page 3, lines 12-14) and "methods for the direct filling of teeth utilizing the filler/reinforcer of the present invention with an initially liquid settable filling material comprising, in addition to filler, a binder wherein the material is allowed to harden after insertion in a tooth." Obviously, Lyles et al. is directed to a particulate filler for use in a settable composition as a replacement for traditional metal-based fillings for cavities. Lyles et al. is not directed in any way to a method for detection of a target molecule utilizing a "diagnostic device comprising a porous material" with a "partner molecule" attached thereto to produce a partner molecule -- target molecule complex for diagnostic purposes. As stated, Lyles et al. merely discloses a particulate filler for teeth filling compositions.

Arnold is directed to "Carboxyl Anchored Immobilized Antibodies" made by reacting "an animated core support with an antibody in the presence of a condensing agent which promotes the formation of the amide linkage." (Title & Abstract) The "core support" is described as an "inorganic solid" and the inorganic solid may consist of "aluminas, silica, silica-alumina," etc. (Col. 3, Lines 5-14) It is clear that Lyles et al. and Arnold are directed to totally different non-analogous subject matters --- Lyles et al., teeth fillings, and Arnold "immobilized antibodies." Consequently, it is respectfully submitted that Lyles et al. and Arnold are not properly combinable, i.e., one of ordinary skill in the art trying to solve the problem to which the presently claimed embodiment of the invention solves, would not look to Lyles et al., a teeth filling composition comprising a particulate filler mixed with a settable

liquid material to combine with Arnold, an immobilized antibody system. Withdrawal of the rejection is respectfully requested.

Further, even if Lyles et al. and Arnold were combined -- which the Applicant does not concede is proper -- the combination would not yield the present invention. Indeed, since Lyles et al. is directed to compositions comprising filler and an initially liquid settable material, it is unclear how Lyles et al. and Arnold would be combined. Lyles et al. only disclosed compositions comprising binder and filler, a two-phase system, and Arnold teaches just a "support." However, if one were to combine the two, it would seem the most likely result would be a "support" comprising an initially liquid settable binder and a filler used for Arnold's "carboxyl anchored immobilized antibodies" system. Such a system would not be useful for the use of the presently claimed embodiment of the invention. Clearly the "binder" of Lyles et al. would fill the voids of the "porous" support and yield it non-porous. The present claims are directed to a "porous material." Thus, withdrawal of the rejection is requested.

CONCLUSION

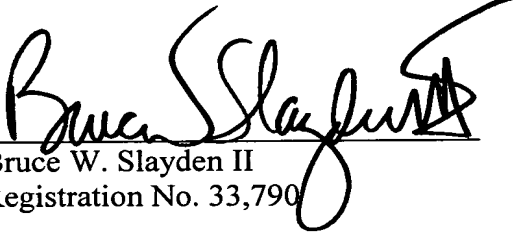
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of the claims as amended.

Applicant believes no additional fees are due at this time, however, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2606.

Respectfully submitted,
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